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SENSITIVE

SIPDIS

STATE FOR EAP/MTS, EAP/EP, AND EB/IFD

DEPARTMENT FOR EEB/TPP/IPE

STATE PASS USTR FOR BWEISEL, RBAE AND BKLEIN

STATE ALSO PASS USAID, OPIC, USDA

BANGKOK FOR USPTO JENNIFER NESS

TREASURY FOR OASIA

USDOC FOR 4430/ITA/MAC

USDOC PASS USPTO

STATE ALSO PASS LOC

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [RP](#)

SUBJECT: Philippines: Intellectual Property Rights Updates for Out-of-Cycle Review

REF: A. Manila 505; B. Manila 1923

**¶1.** Summary. The U.S. Trade Representative (USTR) announced in April 2009 that the Philippines would remain on the intellectual property rights (IPR) Special 301 Watch List, but that USTR would conduct an Out-of-Cycle Review (OCR) to gauge progress on key issues. While progress is being made in judicial reform, anti-camcording legislation, and IPR outreach, other initiatives have stalled. In particular, implementing legislation for the World Intellectual Property Organization (WIPO) Internet treaties has seen little movement, and funding for some intellectual property (IP) units remain uncertain. Passage of the Cheaper Medicines Act raised concerns about patent protection, and compulsory licensing is still a possibility. While the strengthening of IP-focused governmental institutions remains a challenge, maturing institutions such as the Intellectual Property Office (IPO) and National Committee on IPR (NCIPR) suggest some momentum in favor of improved IPR protection in the Philippines. End Summary.

Proposal for New Rules of Procedures for IP Cases Delivered to the Philippine Supreme Court

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**¶2.** (U) The Philippine judicial system is often cited by IP stakeholders as a bottleneck to effective IPR protection. In response to Supreme Court Chief Justice Reynato Puno's November 2008 request, a special working group delivered a proposal for new procedural rules to govern IP litigation on October 27 to expedite and clarify the judiciary's IPR litigation process (reftel A). The working group members represent the IPO, NCIPR, state prosecutors, law enforcement, customs, regional trial court judges, and private sector lawyers.

**¶3.** (SBU) The proposed rules aim for cases to be resolved within an average of one year. Specific provisions include procedures for the quick destruction of seized counterfeit goods; streamlined procedures for subject matter expert testimony; alternative dispute resolution; and the establishment of specialized IP courts with national jurisdiction. The Supreme Court is directing the formation of a judicial study committee to review the proposed rules and present the revised procedures to the Supreme Court for adoption. These two steps are expected to conclude within Chief Justice Puno's term, which expires in May 2010.

Recent and Ongoing Judicial Cases

14. (SBU) Two notable and recent out-of-court settlements uphold IPR rights, although many more cases are pending. In July 2009, Turtle Cable reached a settlement with Cable and Satellite Broadcasting Association of Asia (CASBAA) approximately one year after the case was filed with IPO's Bureau of Legal Affairs (IPO/BLA). The settlement required Turtle Cable to publicly apologize for cable piracy, commit to the use of only authorized programming, and symbolic restitution. Still, Newell Rubbermaid continues to press its trademark infringement cases against its former partner, Amalgamated Specialties Corporation (AMSPEC) through the IPO adjudication process, as well as in local courts, first filed in June 2008. There appears to be little movement in the long-standing case against Phillips Seafood Philippines Corporation (PSPC), a subsidiary of U.S.-based Phillips Seafood, in which competitor Kanemitsu Yamaoka alleges patent infringement in tuna processing. The case has been pending with IPO/BLA since mid-2003.

Patents: The Cheaper Medicines Act

15. (U) The passage and implementation of the Cheaper Medicines Act raised concerns within the pharmaceutical industry about the possible weakening of patent protection. Since the last cycle review, President Macapagal-Arroyo reduced the price of five brand name pharmaceuticals by executive order (reftel B). These price controls have not been accompanied by any movement towards compulsory licensing, however. After many months, the issue remains in the discussion phase within the IPO and the Philippine Department of Health.

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16. (U) In a related issue, pharmaceutical company Pfizer filed a complaint against United Laboratories alleging patent infringement of the anti-cholesterol drug Lipitor. The case was filed with the Makati Regional Trial Court on October 6, with Pfizer maintaining that it owns the patent on atorvastatin, the active ingredient of Lipitor, until 2012. Unilab had previously filed a case with the IPO seeking to invalidate Pfizer's patent on atorvastatin.

Mixed Progress Confronting Digital Piracy

17. (SBU) The passage of national anti-camcording legislation during this session is uncertain. The House passed the Anti-Camcording Act (House Bill 5699) in February and the counterpart (Senate Bill 3300) was filed in June. The Senate Committee on Public Information and Mass Media conducted technical working group meetings and public hearings. The Committee report is being circulated for member signatures. Congress is expected to take up the bill soon after it resumes session in November. Several influential senators are supportive of the anti-camcording bill, though the committee encourages stakeholders to actively advocate passage, suggesting it needs a push.

18. (U) In 2008, the Manila City Legislative Council passed a city ordinance against camcording in movie theaters. Two nationwide movie theater chains, Shoe Mart (SM) and Ayala, regularly run trailers asking viewers to alert management if they see patrons using recording devices. At theater entrances, large signs explaining the camcording prohibition greet movie-goers.

19. (U) The slow pace of WIPO Internet treaty implementation illustrates the difficulty of capturing legislators' attention in an election year. Contacts in the IP community cite the need for better education of legislators and the public regarding WIPO and the enabling legal framework that those treaties would provide Philippine IP enforcement units.

Control over Pirated Goods Distribution Improves

110. (SBU) Seizures in the first nine months of 2009 have already surpassed 2008 totals, and include eight replicating machines with

an annual capacity of 32 million DVDs; and 17 confiscations worth about \$20 million USD of pirated DVDs, counterfeit shoes and apparel, cell phone accessories, and automobile parts, mostly originating from China.

**¶11.** (SBU) The Intellectual Property Rights Division of the National Bureau of Investigation (IPR/NBI) conducted 31 operations, served 214 search warrants, filed 202 cases and seized goods worth more than \$11 million USD from January to September of 2009. With nine agents based in Metro Manila, IPR/NBI uncovered unlicensed software usage by retailers, business process outsourcing firms, multimedia and creative design firms, construction and engineering design firms, as well other establishments. During the same period, the Anti-Fraud and Commercial Crimes Division of the Philippine National Police (PNP) conducted 28 operations, served 164 search warrants, and made seizures worth more than \$51.3 million. Police carried out enforcement actions against offices using unlicensed Microsoft and Autocad software, and retail outlets and warehouses that were selling counterfeit products that range from luxury bags, shoes, apparel, beauty products, batteries, and electrical products. Despite the high volume of seizures, we are not aware of any resulting convictions or penalties.

**¶12.** (SBU) In addition to these law enforcement efforts, the Optical Media Board seized more than 3.2 million optical disks valued at \$20.9 million USD in the first nine months of 2009, and carried out 958 inspections in the first three quarters of 2009.

**¶13.** (U) New collective licensing agreements between publishers and universities aim to reduce certain types of piracy. The Filipinas Copyright Licensing Society (FILCOLS) is working with the National Book Development Board and the IPO to impress upon universities the importance of intellectual property. Working with De La Salle University, FILCOLS expects to pilot a collective licensing agreement on the use of copyrighted books and materials by the end

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of the year. De La Salle University is one of 29 universities in the Philippines with an explicit IP policy, the result of efforts stemming from a Memorandum of Understanding (MoU) between IPO and the Commission of Higher Education.

The Challenge of Institutionalization

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**¶14.** (SBU) Although the 2008 Executive Order creating IP units within key executive agencies was a welcome move, many of those units have been hampered by low budgets and demoralized staff. More recently, some IP Units have received additional fiscal and personnel resources. For example, Executive Order 736 converted the Bureau of Customs IP Unit into a permanent administrative division (reftel A) and Finance Secretary Teves approved staff increases for the division. Although its permanent establishment and budget have not yet been formally approved by the Department of Budget and Management, the Unit moved to a new, larger office in October 2009.

**¶15.** (SBU) The Optical Media Board (OMB) continues to face budget constraints (reftel A). For this reason, the OMB has had difficulty attracting managers who are knowledgeable in IP and dedicated to institutional development. Like his predecessor, the new chairman of OMB, who was appointed October 23, is a former actor considered to have electoral ambitions; it is too early to tell whether he will be vigorous in carrying out enforcement activities.

IPR for National Development

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**¶16.** (U) IPO is pushing public-private initiatives with a recent focus on the judiciary. Its annual colloquium on intellectual property hosts substantive discussion of IPR, this year on procedural rules for IP litigation. The IPO also advocated for a judicial branch member on the National Committee on Intellectual Property Rights (NCIPR).

**¶17.** (U) In the area of commercialization and management of IP assets, the Intellectual Property Research and Training Institute

(IPRTI), established in 2008, has trained over 200 scientists, researchers, lawyers, business executives. Since 2007, over 43 regulators and practitioners working in the field have traveled to the U.S. for IPR-related training. The Philippine government is becoming more engaged at the regional and global level on intellectual property protection and assumed the chairmanship of the Association of Southeast Asian Nations (ASEAN) Coordinating Committee on Intellectual Property Policy and Cooperation (ACIPC) in June 2009.

Comment

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¶18. (SBU) In each branch of national government, some positive developments indicate modest progress on IPR protection. The Philippine Supreme Court is leading the much-needed reform of the IP litigation process. Significant improvement in judicial reform would render enforcement more consequential, complementing the executive branch's upward trend in pirated goods seizures. An anti-camcording law would also bolster enforcement, although passage of the bill remains uncertain in this election cycle. For longer term gains, the IPO engages broadly with the university, business, and scientific communities to assert IPR as a tool for national development. While substantial areas for improvement remain in the Philippines, this set of initiatives targets increasingly limited government resources on attainable goals.

KENNEY